

John A. Moe, II, State Bar No. 066893
MCKENNA LONG & ALDRIDGE LLP
300 South Grand Avenue, Suite 1400
Los Angeles, California 90071
Telephone No.: 213.688.1000
Fax No.: 213.452.8039
E-Mail: jmoe@mckennalong.com

Attorneys for Midland Pacific Building Corporation

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA BARBARA DIVISION

MIDLAND PACIFIC BUILDING
CORPORATION,

Plaintiff,

v.

JOHN E. KING, CAROLE D. KING,
Defendants.

DONNA CANGELOSI, in her capacity
as TDI Representative,

Intervenor.

Adv No. 9:12-ap-01147-RR

Hon. Robin L. Riblet

**MIDLAND PACIFIC BUILDING
CORPORATION'S MOTION TO
REMAND LITIGATION, BETWEEN
NON-DEBTORS MIDLAND PACIFIC
BUILDING CORPORATION AND
JOHN AND CAROLE KING, TO THE
SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY
OF SAN LUIS OBISPO;
DECLARATIONS OF DENNIS
MORESCO, REED HARRIS AND
THOMAS D. GREEN**

DATE: [TO BE SET BY COURT]

TIME: [TO BE SET BY COURT]

CRTRM: 201

United States Bankruptcy Court
1415 State Street
Santa Barbara, CA 93101-2511

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Abrego Abrego v. The Dow Chem. Co.</i> , 443 F.3d 676 (9th Cir. 2006).....	15
<i>Duncan v. Stuetzle</i> , 76 F.3d 1480 (9th Cir. 1996).....	15
<i>Ethridge v. Harbor House Rest.</i> , 861 F.2d 1389 (9th Cir. 1988).....	15
<i>Gaus v. Miles</i> , 980 F.2d 564 (9th Cir. 1992).....	15
<i>Hopkins v. Plant Installation Company</i> , 349 B.R. 805 (N.D. Cal. 2006).....	18
<i>In re Enron Corp.</i> , 296 B.R. 505 (C.D.Cal.2003).....	16, 17, 18, 19
<i>In re McCarthy</i> , 230 B.R. 414 (9th Cir. 1999).....	16, 17
<i>In re Roman Catholic Bishop of San Diego</i> , 374 B.R. 756 (Bankr. S.D. Cal. 2007)	16, 17
<i>In re Tucson Estates, Inc.</i> , 912 F.2d 1162 (9th Cir. 1990).....	19, 20
<i>Midland Pacific Building Corporation v. John E. King & Carole D. King</i> , Case No. CV 060107 (the “Midland Pacific/King Case”)	1
<i>Western Helicopters, Inc. v. Hiller Aviation, Inc.</i> , 97 B.R. 1 (E.D.Cal.1988)	18

STATUTES

28 U.S.C.	
§ 1334(c)(1).....	1, 15, 16
§§ 1441-1452.....	15, 16, 17
§ 1452(b)	1
California Code of Civil Procedure	
§ 425.16.....	7
§ 3050	14
§ 1008.....	12

	<u>TABLE OF CONTENTS</u>	<u>Page</u>
1		
2		
3	I. STATEMENT OF FACTS	1
4	II. PROCEDURAL HISTORY OF LAWSUIT.....	6
5	A. Midland Pacific's Original Complaint And Lis Pendens	6
6	B. Midland Pacific's First Amended Complaint	7
7	C. King's Motion To Dismiss First Amended Complaint And	
8	Appeal.....	7
9	D. King's Motion To Expunge Lis Pendens And Writ Of Mandate.....	8
10	E. King Obtains Approval For A High Density Map	9
11	F. Delivery By Midland Pacific Of Monthly Payments To King.....	9
12	G. Midland Pacific's Second Amended Complaint And Stipulation	
13	And Order Permitting Lis Pendens To Remain Of Record.....	10
14	H. King's Demurrer, Answer And Cross-Complaint.....	11
15	I. Superior Court Denies Motion To Re-Record The Lis Pendens	
16	But Determines Fourth Cause Of Action States A Real	
17	Property Claim	12
18	J. Midland Pacific Files Renewed Motion To Re-Record Lis	
19	Pendens	12
20	K. Midland Pacific And Kings Stipulate To A Resolution Of The	
21	Lis Pendens Issue And Superior Court Enters An Order	
22	Remitting Lis Pendens To Remain Of Record.....	13
23	L. Midland Pacific's Third Amended Complaint, Mediation And	
24	Trial Date	14
25	M. Cangelosi Files Notice of Removal	15
26	III. THIS COURT SHOULD ABSTAIN FROM EXERCISING	
27	JURISDICTION OVER THE SUPERIOR COURT CASE ON	
28	PERMISSIVE AND/OR EQUITABLE GROUNDS UNDER 28 U.S.C. §§	
	1334(c)(1) AND 1452(b)	15
	III. CONCLUSION	21

1 Midland Pacific Building Corporation ("Midland Pacific"), the Plaintiff on a
2 Complaint filed in the Superior Court of the State of California for the County of
3 San Luis Obispo ("SLO Superior Court") captioned: *Midland Pacific Building*
4 *Corporation v. John E. King & Carole D. King*, Case No. CV 060107 (the "Midland
5 Pacific/King Case"), on which Donna Cangelosi filed a Notice Of Removal on
6 June 13, 2012, files this Motion For Remand, in accordance with Local Bankruptcy
7 Rules 9027-1(c) (which requires that "[a] motion for remand must be filed with the
8 clerk of the bankruptcy court not more than 30 days after the date of filing of the
9 notice of removal").

10 **PRELIMINARY STATEMENT**

11 Plaintiff, Midland Pacific, seeks entry of an Order that will remand the
12 Midland Pacific/King Case back to the SLO Superior Court pursuant to 28 U.S.C.
13 §§ 1334(c)(1) and 1452(b).

14 The Court should remand and abstain the case on equitable grounds and in
15 the interest of justice and comity in accordance with 28 U.S.C. §§ 1334(c)(1) and
16 1452(b), because the Superior Court Case is between California residents, neither
17 the Plaintiff nor the Defendants are Debtors in bankruptcy, the case involves a
18 Purchase Agreement drafted and signed in California, California law controls the
19 outcome of the Case, and the matter has been heavily litigated in the California
20 State Court for the past six years.¹

21 **I.**

22 **STATEMENT OF FACTS**

23 The Complaint filed in the Superior Court arises out of a real property
24 dispute in connection with the execution on February 4, 2003, of an "Agreement Of
25 Purchase And Sale And Joint Escrow Instructions" (the "Purchase Agreement")
26

27 ¹ Midland Pacific is in the process of completing, and will file, when appropriate, a
28 Motion For Relief From The Automatic Stay, so that the matter that was pending in
the SLO Superior Court, can be adjudicated in the SLO Superior Court.

1 between the sellers, John E. King ("King") and Carole D. King and the buyer,
2 Midland Pacific. [Declaration of Dennis Moresco ("Moresco Decl."), ¶ 4].

3 Midland Pacific is a California corporation with its office in Atascadero.
4 [Moresco Decl., ¶ 5]. The King's residence is in San Luis Obispo. [Moresco Decl.,
5 ¶ 5]. The Purchase Agreement was negotiated and signed in California [Moresco
6 Decl., ¶¶ 4 & 5].

7 The subject of the Purchase Agreement is a 98-acre parcel of land ("SLO
8 Property") located in the Margarita Expansion area within the City of San Luis
9 Obispo (the "City"). [Moresco Decl., ¶ 6].

10 It was understood by Midland Pacific and King that 27 of the 98 acres of the
11 SLO Property were intended for the development of residential lots, with the
12 remaining 71 acres to be dedicated to the City as open space after the sale [Moresco
13 Decl., ¶ 7]. Although the Purchase Agreement contemplated the sale of the entire
14 98-acre parcel, the purchase price was based upon the number of Market Rate Lots
15 approved for development on the 27-acre portion of the SLO Property [Moresco
16 Decl., ¶ 7].

17 Accordingly, the ultimate purpose of the Purchase Agreement was as follows:

- 18 • To require King to complete the processing of a Tentative
19 Subdivision Map for 27-acres of the SLO Property in
20 conformance with the Draft Tract Map attached to the Purchase
21 Agreement [Moresco Decl., ¶ 8]; and,
- 22 • Upon obtaining the approval of the Tentative Subdivision Map,
23 sell the SLO Property to Midland Pacific [Moresco Decl., ¶ 8].

24 At the time the Purchase Agreement was executed, Defendant King was
25 processing an application for a Map with the City to subdivide the SLO Property.
26 [Moresco Decl., ¶ 13]. The Purchase Agreement called for King to continue to
27 process the Map and to obtain approval of a subdivision that was in "*substantial*

28 / / /

1 *conformance*” with a Map attached to the Purchase Agreement and referenced as
2 the “Draft Tract Map.” [Moresco Decl., ¶ 13].

3 The Draft Tract Map showed approximately 120 lots. [Moresco Decl., ¶ 9].
4 However, the Purchase Agreement contained a recitation that both parties
5 recognized that the *actual number of lots might be more or less than 120*. [Moresco
6 Decl., ¶ 15].

7 The Purchase Agreement provided that the final purchase price for the SLO
8 Property would be based upon the number of “Market Rate Lots” approved by the
9 City. [Moresco Decl., ¶ 9]. Market Rate Lots were defined as single family
10 residential lots that were both in substantial conformance with the lots shown on
11 the “Draft Tract Map” and free from any affordability restrictions. [Moresco Decl.,
12 ¶ 9]. Approved lots that were not Market Rate Lots, would not be considered in
13 calculating the purchase price. [Moresco Decl., ¶ 9].

14 Under the terms of the Purchase Agreement, Midland Pacific also was
15 obligated to loan the Defendants the amount of One Million Dollars (\$1,000,000);
16 Midland Pacific did so [Moresco Decl., ¶ 10].

17 Under the terms of the Agreement, Midland Pacific also was obligated to
18 make monthly payments in the amount of \$15,000 to the Defendants; Midland
19 Pacific did so [Moresco Decl., ¶ 11]. These monthly payments were referenced in
20 the Purchase Agreement as “Note Payments” because they were to be applied by
21 King to the outstanding loans against the SLO Property [Moresco Decl., ¶ 11].
22 Midland Pacific made the required monthly payments until July 2008 [Moresco
23 Decl., ¶ 11].

24 In connection with the Purchase Agreement, a “Memorandum Of Agreement
25 And Sale And Joint Escrow Instructions” was recorded with the County Recorder
26 for San Luis Obispo” [Moresco Decl., ¶ 12], a copy of which is attached as Exhibit
27 “C.” As set forth in the Memorandum:

28 / / /

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
5
7
8

5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
5
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
5
7
8

15
16
17
18
19
20
21
22
23
24
25
26
27
28

19
20
21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

28

1 In January 2006, the subdivision Application had been set for hearing before
2 the City Planning Commission. [Harris Decl., ¶ 11]. City staff was recommending
3 approval of a Tentative Map with 140 single family residential lots which Midland
4 agreed was in substantial conformance with the "Draft Tract Map" attached to the
5 Purchase Agreement. [Harris Decl., ¶ 11].

6 At this point, things began to go awry.

7 On or about January 18, 2006, John King spoke with Reed Harris. [Harris
8 Decl., ¶ 14]. Mr. King told Mr. Harris that processing the Map had been more
9 expensive than anticipated and that, based on market conditions, the lots were
10 worth much more than the contract price. [Harris Decl., ¶ 14]. Mr. King told
11 Mr. Harris that Midland would have to agree to increase the purchase price of the
12 lots by a total of \$40,000 per lot. [Harris Decl., ¶¶ 14 & 15].

13 If Midland did not agree, Mr. King said that he would present a Map to the
14 City which would both reduce lot size and increase the number of lots from 140 to
15 approximately 190-200. [Harris Decl., ¶ 15]. Mr. Harris told Mr. King that he
16 would have to speak to Midland's president, Dennis Moresco. [Harris Decl., ¶ 15].

17 Mr. King did call Mr. Moresco and repeated what he had earlier told Mr.
18 Harris. [Moresco Decl., ¶ 16]. Mr. Moresco told Mr. King that Midland would not
19 increase the purchase price and that he expected Mr. King to perform as provided
20 in the Purchase Agreement. [Moresco Decl., ¶ 16].

21 At the January 25, 2006, Planning Commission meeting, King, for the first
22 time, unveiled a new Map. [Harris Decl., ¶ 18]. True to King's threat, the proposed
23 new Map provided for greater density. [Harris Decl., ¶ 18]. This Map was prepared
24 shortly before the Planning Commission meeting and had not been submitted to
25 City Planning staff, the public or to Midland before the Planning Commission
26 [Harris Decl., ¶¶ 17 & 18].

27 / / /

28 / / /

1 Reed Harris and Midland's attorney addressed the Planning Commission and
2 objected to the new prepared Map based on the Purchase Agreement. [Harris Decl.,
3 ¶ 18].

4 The Planning Commission disregarded Midland's complaints and approved
5 King's new Map. [Harris Decl., ¶ 18].

6 On March 7, 2006, the City Council heard the matter of the three projects.
7 [Harris Decl., ¶ 19]. At the City Council meeting, the two adjacent projects were
8 approved without substantial change. [Harris Decl., ¶ 19]. Midland objected to the
9 City Council's consideration and approval of the new King Map on the grounds that
10 the consideration of the new Map by the Planning Commission was a violation of
11 the Brown Act and that no review under the California Environmental Quality Act
12 has been undertaken as to the new Map. [Harris Decl., ¶ 19]. The City Council did
13 not approve the new King Map on March 7th, and directed Mr. King to return to the
14 Planning Commission. [Harris Decl., ¶ 19].

15 Subsequently, the City Council did approve on July 3, 2006 the new King
16 High Density Map with approximately 178 lots. [Harris Decl., ¶ 20].

17 **II.**

18 **PROCEDURAL HISTORY OF LAWSUIT.**

19 The procedural history of this Litigation has been complex, with multiple
20 amendments to Complaints and Cross-Complaints, and multiple Rulings and
21 Orders by the Court Of Appeals and Superior Court, many dealing with a *Lis*
22 *Pendens*. Accordingly, **Midland Pacific attaches to this Motion, as Exhibit "A,"**
23 **a Chart on the procedural history of the Superior Court Case.**

24 A. Midland Pacific's Original Complaint And *Lis Pendens*

25 Midland Pacific filed on February 10, 2006, a Complaint against John King
26 ("King") and Carole King in the Superior Court in San Luis Obispo [Declaration of
27 Thomas Green ("Green Decl."), ¶ 5].

28 / / /

1 The subject matter of the Complaint was the Purchase Agreement executed
2 by Midland Pacific and the Kings [Green Decl., ¶ 5], a copy of which is attached as
3 Exhibit "B."

4 In connection with the original Complaint, a *Notice Of Pendency Of Action* was
5 filed and recorded on February 10, 2006, a copy of which is attached as Exhibit "D"
6 [Green Decl., ¶ 6].

7 B. Midland Pacific's First Amended Complaint

8 On March 23, 2006, Midland Pacific filed a First Amended Complaint in
9 which Midland Pacific alleged that the Kings had breached the Purchase Agreement
10 [Green Decl., ¶ 7]. A copy of the First Amended Complaint (without Exhibits) is
11 attached as Exhibit "E." The crux of the First Amended Complaint was King's
12 insistence on processing a subdivision Map that was not in substantial
13 conformance with the "Draft Tract Map" attached to the Purchase Agreement.
14 Because the Purchase Agreement required King to process a Map that was in
15 substantial conformance with the "Draft Tract Map," the First Amended Complaint
16 asserted that King was in breach [Green Decl., ¶ 7]. The First Amended Complaint,
17 among other things, requested an order specifically enforcing King's obligation to
18 process a subdivision Map in substantial conformance with the Purchase
19 Agreement [Green Decl., ¶ 7].

20 C. King's Motion To Dismiss First Amended Complaint And Appeal

21 King responded to the First Amended Complaint by filing a Motion To
22 Dismiss the action under the anti-SLAPP Statute (California Code of Civil Procedure
23 Section 425.16) [Green Decl., ¶ 8]. The effect of filing an anti-SLAPP Motion is to
24 stay the proceedings, with few exceptions; one of the actions stayed is the ability to
25 amend the pleadings [Green Decl., ¶ 8].

26 Midland Pacific opposed the anti-Slapp Motion [Green Decl., ¶ 9].

27 The Superior Court *denied* King's Motion. King appealed [Green Decl., ¶ 10].

28 / / /

1 On July 18, 2007, the Court Of Appeals issued its published Opinion
2 affirming the trial court ruling [Green Decl., ¶ 11]. A copy of the Opinion is
3 attached as Exhibit "F." In its Opinion, the Court Of Appeal found that Midland
4 Pacific had established a reasonable probability of success on the merits [Green
5 Decl., ¶ 11].

6 King filed a Petition For Review asking the California Supreme Court to
7 consider the matter [Green Decl., ¶ 11]. On March 12, 2008, the Supreme Court,
8 without opinion, denied King's Petition For Review [Green Decl., ¶ 11].

9 The stay remained in effect during the appeal including the time during
10 which the Petition For Review was pending [Green Decl., ¶ 11].

11 D. King's Motion To Expunge Lis Pendens And Writ Of Mandate

12 On or about September 2006, after the anti-SLAPP ruling had been appealed,
13 King brought a Motion To Expunge Lis Pendens that Midland Pacific had recorded
14 in February, 2006 [Green Decl., ¶ 12]. The primary contention of King's Motion was
15 the argument that because the action only sought to enforce the obligation to
16 process the correct Map, it was not a "real property claim" [Green Decl., ¶ 12].
17 Disagreeing with King, the Superior Court *denied* King's Motion To Expunge [Green
18 Decl., ¶ 12].

19 King filed a Petition For Writ Of Mandate with the Appellate Court. On
20 July 18, 2007, the Appellate Court issued a Writ Of Mandate directing the trial
21 court to expunge the Lis Pendens [Green Decl., ¶ 13]. The basis of the Court's
22 ruling was its belief that an action to specifically enforce processing a subdivision
23 Map, even if undertaken as part of a purchase and sale agreement, did not involve
24 title to or possession of real property and therefore would not support a Lis Pendens
25 [Green Decl., ¶ 13]. A copy of the *unpublished* Appellate Court Opinion is attached
26 as Exhibit "G."

27 / / /

28 / / /

1 Midland Pacific requested that the Supreme Court review the Appellate
2 decision [Green Decl., ¶ 13]. On March 12, 2008, that request was denied [Green
3 Decl., ¶ 13].

4 E. King Obtains Approval For A High Density Map

5 On or about July 3, 2007, King obtained approval from the City of San Luis
6 Obispo for a Tentative Subdivision Map for the SLO Property which is significantly
7 different from the "Draft Tract Map" attached to the Purchase Agreement [Harris
8 Decl., ¶ 20; Green Decl., ¶ 14]:

- 9 • The "Draft Tract Map," as amended by *agreement* between Midland
10 Pacific and King, contained approximately 140 "Market Rate Lots" as
11 that term is defined in the Purchase Agreement [Moresco Decl., ¶ 15;
12 Harris Decl., ¶ 8; Green Decl., ¶ 14]:
- 13 • The "High Density Map" that King had the City approve had 80
14 "Market Rate Lots" and an additional 98 lots for a total of 178 Lots
15 [Harris Decl., ¶ 20; Green Decl., ¶ 14].

16 Based on King's reconfiguration of the Map, Midland Pacific's position is that
17 the approved tentative Map contains only 80 lots that fall within the contract
18 definition of "Market Rate Lot" [Moresco Decl., ¶ 9; Green Decl., ¶ 15]. The
19 purchase price for the SLO property, therefore, is determined on the basis of 80
20 market rate lots at the contract price of \$125,000 per lot.

21 F. Delivery By Midland Pacific Of Monthly Payments To King

22 Under Purchase Agreement, Midland Pacific also is obligated to make
23 monthly payments to King in the amount of Fifteen Thousand Dollars (\$15,000.00)
24 [Moresco Decl., ¶ 11; Green Decl., ¶ 16]. Midland Pacific made all required
25 payments in a timely manner [Moresco Decl., ¶ 11; Green Decl., ¶ 16]. Beginning
26 on or about May 5, 2006, King refused to accept these monthly payments [Green
27 Decl., ¶ 16]. After King refused to accept the monthly payments, Midland Pacific
28 opened an escrow at First American Title Company in San Luis Obispo [Green

Decl., ¶ 16]. On June 29, 2007, King's counsel sent a letter to Midland Pacific returning two un-cashed checks and stating that it was King's position that Midland Pacific was in breach of the Purchase Agreement and that King objected to the depositing of funds into the escrow account for King [Green Decl., ¶ 16]. Midland Pacific continued to deposit all rejected payments into the First American escrow account until July 2008, when it ceased making additional payments [Green Decl., ¶ 16].

G. Midland Pacific's Second Amended Complaint And Stipulation And Order Permitting Lis Pendens To Remain Of Record

Based upon: (1) King obtaining approval of a Map that Midland Pacific contends is not in conformance with the Purchase Agreement, which approval triggered Midland Pacific's obligation to purchase the SLO Property; (2) King's refusal to accept monthly payments; and (3) the Court Of Appeals issuing its decision that the First Amended Complaint did not include a cause of action affecting title to or possession of real property, Midland Pacific filed on April 11, 2008:

- A Notice Of Motion And Motion To Amend First Amended Complaint;
- A Notice Of Motion And Motion To Re-Record *Lis Pendens* Following Expungement; and,
- An *Ex Parte* Application For Order Shortening Time For Hearing On Motions To Amend First Amended Complaint And To Re-Record *Lis Pendens* Following Expungement [Green Decl., ¶ 17].

On April 15, 2008, the parties stipulated in Court to Midland Pacific filing a Second Amended Complaint and *agreed to the Court forbearing from issuing an Order to expunge the Lis Pendens* [Green Decl., ¶ 18].

The Second Amended Complaint was filed on April 15, 2008. As already noted, under the terms of the Purchase Agreement, the City's approval of the Map triggered Midland Pacific's obligation to purchase the SLO Property [Green Decl.,

¶ 19]. Midland Pacific was therefore in a position, for the first time, to seek specific performance of the sale of the SLO Property at a specific price [Green Decl., ¶ 19]. The Second Amended Complaint, in its fourth cause of action, contains a request for specific performance to force King to honor its obligations under the Purchase Agreement to sell the SLO Property to Midland Pacific [Green Decl., ¶ 19]. A copy of the Second Amended Complaint (without Exhibits) is attached as Exhibit "H."

On May 2, 2008, the Court issued an Order on forbearing from issuing an Order to expunge the *Lis Pendens* and set a briefing schedule on Midland Pacific's Motion To Re-Record *Lis Pendens* [Green Decl., ¶ 20]. A copy of the Order is attached as Exhibit "I." The Order states:

6. The Court will forbear from entering an order expunging the Notice of Pendency of Action recorded on February 10, 2006 as Instrument No. 2006-009942 of the Official Records of the County of San Luis Obispo until:

(a) the Kings' pleading responsive to the Second Amended Complaint and all briefs filed in support and opposition thereto have been heard by this Court and this Court has determined whether Midland can maintain a real property claim in this action;

(b) if the a cause of action supporting a real property claim survives the pleading state, Midland has expeditiously filed a motion to re-record lis pendens pursuant to CCP Section 405.36; and

(c) such motion to re-record lis pendens is ruled on by this Court [Green Decl., ¶ 20].

H. King's Demurrer, Answer And Cross-Complaint

On or about May 5, 2008, King filed a Demurrer to Midland Pacific's Second Amended Complaint [Green Decl., ¶ 21]. On May 27, 2008, the Court overruled King's Demurrer.³

³ In ruling on the Demurrer, the Court found that (1) the terms of the Purchase Agreement were not so uncertain as to render the agreement unenforceable as a matter of law; (2) that the Subdivision Map Act was inapplicable to the Purchase Agreement; and (3) the terms of the Purchase Agreement were not inconsistent or uncertain such that specific performance was not a possible remedy [Green Decl., ¶ 21].

On or about June 26, 2008, King filed a Cross-Complaint For Declaratory Relief, Breach Of Contract, Breach Of Implied Covenant Of Good Faith And Fair Dealing, Reformation Of Contract, And Rescission Of Contract [Green Decl., ¶ 22].

I. Superior Court Denies Motion To Re-Record The Lis Pendens But Determines Fourth Cause Of Action States A Real Property Claim

On August 28, 2008, Judge Charles Crandall of the Superior Court entered an Order denying Plaintiff's Motion For Leave To Re-Record *Lis Pendens* [Green Decl., ¶ 23], referring to the Second Amended Complaint:

- That Order specifically found that
The Fourth cause of action for specific performance clearly affects the title and possession of the Property and is a "real property claim" pursuant to CCP §§ 405.1 and 405.4. This is confirmed in *BGJ Associates v. Superior Court* (1999) 75 Cal.App.4th 952, when the appellate court cites a "classic example" of a cause of action affecting real property: "[a] buyer's action for specific performance of a real property purchase and sale agreement is a classic example of an action in which a lis pendens is both appropriate and necessary." (Cal. Lis Pendens Practice, *supra*, § 3.21, at p. 112; citations)." (BGJ *supra* at 967) *Defendants essentially concede this point.* [Emphasis added.]
- The Order determined that insufficient evidence had been filed to permit the Court to affirm the probable validity of the fourth cause of action, and denied the Motion [Green Decl., ¶ 23]. A copy of the Order is attached as Exhibit "J."

J. Midland Pacific Files Renewed Motion To Re-Record Lis Pendens

Midland Pacific filed on September 8, 2008⁴, a "Notice Of Motion And Renewed Motion For Leave To Re-Record Lis Pendens, Or In The Alternative, Motion To Reconsider The August 28, 2008 Ruling Pursuant to Code of Civil Procedure 1008," which included substantial Declarations and documents to support a

⁴ On or about August 29, 2008, Midland Pacific also had filed a Motion To Strike King's Cross-Complaint pursuant to the anti-SLAPP statute on the basis that King's Cross-Complaint alleged Midland Pacific breached the agreement by appearing at public meetings and communicating with City employees.

1 finding on the probable validity of Midland Pacific's real property claim, contained
2 in the fourth cause of action in the Second Amended Complaint [Green Decl., ¶ 25].

3 A copy of the Renewed Motion (without Exhibits) is attached as Exhibit "K."

4 On September 11, 2008, Midland Pacific filed an Answer to King's Cross-
5 Complaint [Green Decl., ¶ 26].

6 In September and then again in November 2008, the parties stipulated to
7 extend the hearing dates on Midland Pacific's Motion To Strike and Motion To Re-
8 Record Lis Pendens [Green Decl., ¶ 27].

9 On December 22, 2008, the case was reassigned, and at the request of
10 counsel, the Court continued the hearing dates on Midland Pacific's two Motions to
11 February 26, 2009 [Green Decl., ¶ 28].

12 On January 13, 2009, at the request of the parties, the court again extended
13 the hearing on Midland Pacific's Motions to March 18, 2009, which was
14 subsequently moved again to May 13, 2009 [Green Decl., ¶ 29].

15 K. Midland Pacific And Kings Stipulate To A Resolution Of The Lis Pendens
16 Issue And Superior Court Enters An Order Remitting Lis Pendens To Remain
17 Of Record

18 On May 4 & 6, 2010, the parties stipulated to resolve the issues presented by
19 Midland Pacific's pending Motions in order to allow the parties to continue
20 negotiating a possible settlement [Green Decl., ¶ 30], agreeing that:

- 21 • Midland Pacific would be permitted to file a Third Amended Complaint;
- 22 • King would be permitted to file a pleading in response to the Third
- 23 Amended Complaint and an amended Cross Complaint;
- 24 • The Lis Pendens that was ordered expunged but remained of record
- 25 would continue to remain in place until defendant moved for
- 26 expungement or by further agreement of the parties; and
- 27 • That Midland Pacific's Motion To Strike and Motion To Re-Record
- 28 would be taken off calendar [Green Decl., ¶ 30].

1 On May 8, 2009, the Superior Court entered an Order on the Stipulation,
2 permitting the *Lis Pendens* to remain of record [Green Decl., ¶ 31]. The Order
3 states:

4 5. The Notice of Pendency of Action recorded by
5 Plaintiff on February 10, 2006 as Instrument No. 2006-009942
6 of the Official Records of the County of San Luis Obispo shall
7 remain of record unless and until (a) Defendant moves for
expungement and the court grants expungement; or,
(b) agreement of the parties.

8 The Stipulation And Order is attached as Exhibit "L."

9 L. Midland Pacific's Third Amended Complaint, Mediation And Trial Date

10 On June 4, 2009, Midland Pacific filed a Third Amended Complaint adding
11 causes of action, including a ninth cause of action to establish and foreclose a
12 purchaser's lien on the SLO Property pursuant to Civil Code section 3050 [Green
13 Decl., ¶ 32].

14 On July 10, 2009, King filed an Answer to the Third Amended Complaint and
15 a First Amended Cross-Complaint. On August 13, 2009, Midland Pacific filed an
16 Answer to the First Amended Cross Complaint [Green Decl., ¶ 33].

17 On January 14, 2010, the case was reassigned to Judge Dodie Harmon where
18 it remains [Green Decl., ¶ 34].

19 On November 10, 2010, the parties attended private Mediation but were
20 unable to resolve the matter, however the parties continued to work towards
21 resolution [Green Decl., ¶ 35].

22 On March 29, 2011, the parties lodged a Stipulation To Extend The Time To
23 Bring The Action To Trial because the numerous times the case was stayed during
24 various Motions and Appeals made calculating the deadline unclear to both parties
25 [Green Decl., ¶ 36]. The parties agreed that any trial on or before February 6, 2013
26 would be timely [Green Decl., ¶ 36].

27 / / /

28 / / /

1 On August 12, 2011, Midland Pacific filed a Motion For Summary
2 Adjudication to foreclose its Purchaser's Lien, which Midland Pacific subsequently
3 withdrew [Green Decl., ¶ 37].

4 On December 7, 2011, the parties stipulated to extend the trial date to some
5 date prior to December 6, 2012 [Green Decl., ¶ 38].

6 The case is scheduled to go to trial on October 1, 2012 [Green Decl., ¶ 39].

7 M. Cangelosi Files Notice of Removal

8 On June 13, 2012, -- after six years of litigation in the Superior Court --
9 Intervenor Donna Cangelosi filed a Notice Of Removal To Bankruptcy Court after
10 filing, but not having a hearing on, a Motion To Intervene [Green Decl., ¶ 42].

11 Midland Pacific is prepared to file a Motion For Relief From The Automatic
12 Stay if the case is remanded to the Superior Court [Green Decl., ¶ 39].

13 III.

14 **THIS COURT SHOULD ABSTAIN FROM EXERCISING JURISDICTION OVER**
15 **THE SUPERIOR COURT CASE ON PERMISSIVE AND/OR EQUITABLE**
16 **GROUND UNDER 28 U.S.C. §§ 1334(c)(1) AND 1452(b)**

17 Removal jurisdiction is governed by statute. *See* 28 U.S.C. §§ 1441-1452.

18 The Ninth Circuit has held unequivocally that the removal statutes are
19 construed strictly against removal. *Ethridge v. Harbor House Rest.*, 861 F.2d 1389,
20 1393 (9th Cir. 1988); *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996).

21 The strong presumption against removal jurisdiction means that "the
22 defendant always has the burden of establishing that removal is proper." *Gaus v.*
23 *Miles*, 980 F.2d 564, 566 (9th Cir. 1992) (citations omitted); *see also Abrego Abrego*
24 *v. The Dow Chem. Co.*, 443 F.3d 676, 683-85 (9th Cir. 2006) (The party seeking
25 removal bears the burden of proof). Since the removal statute is strictly construed
26 against removal jurisdiction, federal jurisdiction must be rejected if any doubt
27 exists as to whether removal is proper. *Duncan v. Stuetzle*, 76 F.3d at 1485; *Gaus*
28 *v. Miles, Inc.*, 980 F.2d at 566.

1 A bankruptcy court's power to remand is provided in 28 U.S.C. § 1452(b).
2 Section 1452(b) states that a "court to which such claim or cause of action is
3 removed may remand such claim or cause of action **on any equitable ground.**" *Id.*,
4 emphasis added.

5 The Ninth Circuit has held that "the 'any equitable ground' remand standard
6 is an unusually broad grant of authority. It subsumes and reaches beyond all of the
7 reasons for remand under non-bankruptcy removal statutes." *In re McCarthy*, 230
8 B.R. 414, 417 (9th Cir. 1999) (order granting discretionary equitable remand
9 affirmed because the complaint was grounded upon state law, federal subject
10 matter jurisdiction over the counts was merely concurrent with state courts, and
11 jurisdiction over a non-debtor is attenuated.)

12 In addition, Section 1334(c)(1) states:

13 Except with respect to a case under chapter 15 of title 11,
14 nothing in this section prevents a district court in the interest of
15 justice, or in the interest of comity with State courts or respect
16 for State law, from abstaining from hearing a particular
proceeding arising under title 11 or arising in or related to a
case under title 11.

17 "The 'any equitable ground' remand standard is not statutorily defined.
18 Accordingly, case law has imported 'factors' governing discretionary abstention to
19 assist with the remand decision." *In re Roman Catholic Bishop of San Diego*, 374
20 B.R. 756, 761 (Bankr. S.D. Cal. 2007) (citation omitted); *In re Enron Corp.*, 296 B.R.
21 505, 508-9 (C.D.Cal.2003). Courts may consider up to fourteen factors in
22 determining whether to exercise their remand powers under 28 U.S.C. § 1452(b). *In*
23 *re Enron Corp.*, 296 B.R. at 508, n.2. These factors are:

- 24 (1) the effect or lack thereof on the efficient administration of the estate if
25 the Court recommends [remand or] abstention;
26 (2) extent to which state law issues predominate over bankruptcy issues;
27 (3) difficult or unsettled nature of applicable law;

28 / / /

1 (4) presence of related proceeding commenced in state court or other
2 nonbankruptcy proceeding;

3 (5) jurisdictional basis, if any, other than § 1334;

4 (6) degree of relatedness or remoteness of proceeding to main bankruptcy
5 case;

6 (7) the substance rather than the form of an asserted core proceeding;

7 (8) the feasibility of severing state law claims from core bankruptcy
8 matters to allow judgments to be entered in state court with enforcement left to the
9 bankruptcy court;

10 (9) the burden on the bankruptcy court's docket;

11 (10) the likelihood that the commencement of the proceeding in bankruptcy
12 court involves forum shopping by one of the parties;

13 (11) the existence of a right to a jury trial;

14 (12) the presence in the proceeding of nondebtor parties;

15 (13) comity; and

16 (14) the possibility of prejudice to other parties in the action.

17 *Id.*, 296 B.R. at 508 n. 2 (remand affirmed where none of the parties were debtors
18 and “[c]omity dictates that California courts should have the right to adjudicate the
19 exclusively state law claims involving California-centric plaintiffs and California-
20 centric transactions.”); *see also In re Roman Catholic Bishop of San Diego*, 374 B.R.
21 at 761 (listing factors).

22 Any one of the relevant factors may provide a sufficient basis for equitable
23 remand. *In re Roman Catholic Bishop of San Diego*, 374 B.R. at 762 (“While these
24 [fourteen] factors assist a court's remand decision, they do not control it. The
25 standard remains ‘any equitable ground.’”); *In re McCarthy*, 230 B.R. at 417 (“Any of
26 these [factors]...would justify an exercise of discretion to order remand under 28
27 U.S.C. § 1452(b).”)

28 / / /

Moreover, the analysis for discretionary abstention or equitable remand are substantially the same. *Hopkins v. Plant Installation Company*, 349 B.R. 805, 813 (N.D. Cal. 2006). As set forth in *Western Helicopters, Inc. v. Hiller Aviation, Inc.*, 97 B.R. 1, 6 (E.D. Cal. 1988):

[W]hen deciding to abstain or remand pursuant to 28 U.S.C. §§ 1334(c)(1) or 1452(b), the court must weigh such considerations as: judicial economy; comity and respect for state court decision-making capabilities; the effect of remand upon the administration of the related title 11 estate; the effect of bifurcating the claims and parties to an action and the possibilities of inconsistent results; the predominance of state law issues and non-debtor parties; and the prejudice to other parties to the action.”

In *Western Helicopters, Inc. v. Hiller Aviation, Inc.*, non-debtor plaintiff sued non-debtor defendant in state court for strict products liability and other claims arising out of a helicopter crash. The helicopter had been manufactured by the debtor, whose assets were indirectly acquired by the non-debtor defendant pursuant to a bankruptcy court order for sale of assets. The non-debtor defendant removed the claims against it to the bankruptcy court and plaintiff sought an order for remand under Section 1542(b). The Court granted remand based upon the fact that all of **plaintiff's claims were grounded upon state law, the non-debtor plaintiff and defendant were not involved in the bankruptcy proceeding, the remote relation between the claims involved and a title 11 case, and judicial economy**. *Id.*, 97 B.R. at 6. As the court stated, “the potential danger arises that the court will be forced to resolve non-bankruptcy related issues between non-debtors. The courts have uniformly held that a bankruptcy court should avoid such a situation.” *Id.*, 97 B.R. at 6.

Similarly, in *In re Enron Corp.*, *supra*, purchasers of notes offered by Enron and Enron-sponsored entities filed lawsuits against the banks that distributed those notes based on California securities and unfair competition laws. *Id.* at 507. The banks removed the actions to federal court based upon Enron's bankruptcy filing and plaintiffs moved for remand. *Id.* The Court concluded that “related to”

1 bankruptcy jurisdiction existed because Enron was contractually obligated to
2 indemnify the banks if they were found liable to the plaintiffs, which would give rise
3 to a claim against the Bankruptcy estate. *Id.* at 508. Nevertheless, the Court
4 remanded the action back to state court after considering several of the factors
5 discussed above. *Id.* at 508:

6 Courts generally consider up to fourteen factors in deciding
7 whether to remand a case to state court.... These factors counsel
8 in favor of remand. State law issues predominate because the
9 claims involved are exclusively California state law claims. There
10 is no basis for federal jurisdiction other than section 1334.
11 These proceedings, which do not involve Enron, Enron-related
12 entities, or any of their respective officers or directors, are only
13 remotely related to the bankruptcy proceedings. The exclusively
14 state law claims are non-core. The plaintiffs have demanded a
15 jury trial, which cannot be provided by the bankruptcy court.
16 None of the parties to these cases are debtors. Comity dictates
17 that California courts should have the right to adjudicate the
18 exclusively state law claims involving California-centric plaintiffs
19 and California-centric transactions. [*Id.* at 508, citations and
20 footnotes omitted.]

21 Importantly, the Court stated, “when a state court proceeding sounds in state
22 law and bears a limited connection to a debtor’s bankruptcy case, abstention [and
23 remand] is particularly compelling.” *Id.* at 508, citation omitted.

24 Finally, in *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1167 (9th Cir. 1990),
25 homeowners in a mobile park subdivision brought a class action against debtor and
26 others in state court for breach of an implied restrictive covenant that a golf course
27 owned by the debtor would be maintained for the exclusive use of the homeowners,
28 and for misappropriation of the maintenance fees paid by the homeowners. *Id.* at
1164. Six years into that litigation and a few days shy of trial, the debtor filed for
Chapter 11 protection. *Id.* at 1165. The Bankruptcy Court lifted the automatic
stay on the state court lawsuit and allowed trial to proceed. *Id.* It later reimposed
the stay on the covenant issue, allowed trial to proceed on the misappropriation
issue, but prohibited the state court from determining the liability to each claimant
and entering final judgment against the debtor. *Id.* After the District Court
affirmed that ruling, the homeowners appealed to the Ninth Circuit.

1 The Ninth Circuit reversed the District Court's decision affirming the
2 reimposition of the stay, except as to the execution of judgment. *Id.* at 1169-70.
3 Specifically, the Ninth Circuit found that the **predominant state law issues, six**
4 **years of prior litigation of those issues in state court, lack of federal**
5 **jurisdiction over those issues other than bankruptcy jurisdiction**, "the ease of
6 permitting completion of the state court litigation while reserving the judgment's
7 enforcement to the bankruptcy court," and **the nondebtor status of the plaintiffs**,
8 among other factors, all weighed in favor of abstention. *Id.* The Ninth Court
9 recognized that "the decision on the homeowners' claims will affect significantly the
10 bankruptcy estate's value, and the value of the claims asserted against it." *Id.* at
11 1169. Nevertheless, it concluded that the Bankruptcy Court's refusal to abstain or
12 entirely lift the stay, except as to the execution of judgment, was an abuse of
13 discretion because the covenant and misappropriation issues "are distinct from the
14 administration of the bankruptcy estate." *Id.*

15 Here, neither the plaintiff, Midland Pacific (which is a California corporation,
16 conducting business in Atascadero, California), nor defendants, Kings (who reside
17 in San Luis Obispo, California) are debtors. The Purchase Agreement was executed
18 in California and deals with property in San Luis Obispo.

19 **The claims asserted by both Midland Pacific and Kings are grounded**
20 **upon state law.**

21 Most significantly, the matter has *heavily* litigated, up and down the
22 Appellate Courts, Midland Pacific has filed four operative Complaints, the Kings
23 have filed two operative Complaints, a Motion For Summary Judgment has been
24 filed by Midland Pacific (and taken off calendar, but which can be placed back on
25 calendar immediately), and upon granting of a Motion For Relief From The
26 Automatic Stay, the case can proceed to trial (now scheduled for October 1, 2012).

27 / / /

28 / / /

1 Most significantly, the "Lis Pendens issue"⁵ has been the subject of a First
2 Amended Complaint, a Superior Court Order appealed to the Court of Appeals, a
3 Court of Appeals decision, a subsequently filed Second Amended Complaint, a
4 Superior Court Ruling, a Superior Court Order on a Stipulation allowing the Lis
5 Pendens to remain of record, a Motion to re-record the Lis Pendens, a Superior
6 Court Ruling, a Renewed Motion To Re-Record Lis Pendens, a second Superior
7 Court Order on a Stipulation permitting the Lis Pendens To Remain Of Record, and
8 a Third Amended Complaint.

9 Judicial economy, comity and respect for State Court decision making
10 capabilities, all militate in favor of abstention and remand back to the Superior
11 Court.

12 III.

13 CONCLUSION

14 Midland Pacific seeks a to obtain a Judgment against King in Superior Court,
15 that will permit Midland Pacific to foreclose on Midland Pacific's Purchaser's Lien
16 and recover from King approximately Five Hundred Eighty-One Thousand Dollars
17 (\$581,000) that Midland Pacific paid to King as deposit money towards the
18 purchase of the SLO Property, in addition to interest thereon. However, once
19 Midland Pacific obtains a Judgment against King, **Midland Pacific agrees to**
20 **forebear its right to foreclose on the Property without first going back to the**
21 **Bankruptcy Court to either: (1) have the Debtor agree to Midland Pacific's**
22 **foreclosure and sale of the Property; or (2) to be treated appropriately in**
23 **Bankruptcy as a secured Judgment Creditor with priority.**

24 / / /

25 ⁵ The Notice Of Removal, to which this Motion To Remand is being filed, made no
26 reference to the "Complaint For Slander Of Title And To Remove Clouds On Title,"
27 subsequently filed by Ms. Cangelosi in Nevada. Midland Pacific is preparing
28 Response(s) to that Complaint which will be **lodged** with this Court, which will be a
full and complete response to the legitimacy (or illegitimacy) of the Complaint filed
in Nevada, and whether it should or should not impact a Motion To Remand.

1 For all the reasons set forth hereinabove, this matter should be remanded to
2 the State Superior Court where Ms. Cangelosi's Motion To Intervene can be
3 considered.

4
5 DATED: July 13, 2012

MCKENNA LONG & ALDRIDGE LLP

6
7 By: /s/John A. Moe, II
8 John A. Moe, II
9 Attorneys for Midland Pacific Building
10 Corporation
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF DENNIS MORESCO

I, Dennis Moresco, declare that if called as a witness, I would and could competently testify thereto, my own personal knowledge as follows:

1. I am the President and Chief Executive Officer of the Plaintiff, Midland Pacific Building Corporation ("Midland Pacific ") and have held that position at all times mentioned in this Declaration.

2. I am personally familiar with the relationship between and the facts concerning Midland Pacific and John King ("King") and Carole King.

3. The subject matter of the Superior Court Case arises from an agreement between Midland Pacific and King.

4. More specifically, on or about February 14, 2003, Midland Pacific and King executed an "Agreement Of Purchase And Sale And Joint Escrow Instructions" (the "Purchase Agreement"). Thomas Green, Midland Pacific's attorney, and I negotiated the Purchase Agreement on behalf of Midland. John King and his attorney, Fredrick Glick, negotiated the Purchase Agreement on behalf of the Kings. A true and correct copy of the Purchase Agreement is attached as Exhibit "B."

5. The Purchase Agreement was drafted and signed in California. It is my understanding and belief that Mr. King is a resident of San Luis Obispo, California. Midland Pacific is a California Corporation, whose office is in Atascadero, California.

6. The subject of the Purchase Agreement is a single parcel of land totaling approximately 98 acres (the "SLO Property") in the Margarita Expansion area within the City of San Luis Obispo (the "City").

7. It was understood by Midland Pacific, and I believe by King, at the time we signed the Purchase Agreement – although it is not specifically stated in the contract – that 27 of the 98 acres of the SLO Property were intended for the development of residential lots, with the remaining 71 acres to be dedicated to the

/ / /

1 City as open space after the sale. Although the Purchase Agreement contemplated
2 the sale of the entire 98-acre parcel, the purchase price was based upon the
3 number of Market Rate Lots approved for development on the 27-acre portion of the
4 SLO Property.

5 8. Accordingly, the ultimate purpose of the Purchase Agreement, as I
6 understood it, was as follows:

- 7 • To require King to complete the processing of a Tentative
8 Subdivision Map for 27-acres of the SLO Property in
9 conformance with the Draft Tract Map attached to the Purchase
10 Agreement; and,
- 11 • Upon obtaining the approval of the Tentative Subdivision Map,
12 sell the SLO Property to Midland Pacific.

13 9. As provided in the Purchase Agreement, the subdivision of the SLO
14 Property was to be in substantial conformance with an existing subdivision Map
15 identified in the Purchase Agreement as "Vesting Tentative Tract Map No. 2428
16 dated May 2001 prepared by WRD Engineering" ("Draft Tract Map"), which was
17 attached to the Purchase Agreement as Exhibit "A." The "Draft Tract Map" attached
18 to the Purchase Agreement divided 27 acres of the SLO Property into 120 lots.

19 The Purchase Agreement contained a pricing mechanism where by the final
20 purchase price for the SLO Property would be based upon the number of "Market
21 Rate Lots" approved by the City. Market Rate Lots were defined in the Purchase
22 Agreement as those lots in substantial compliance with lots shown on the "Draft
23 Tract Map" and free from affordability restrictions. Approved lots that were not
24 Market Rate Lots would not be considered in calculating the purchase price.
25 Accordingly, the purchase price relates exclusively to the 27 acre portion of the SLO
26 Property because the development of the residential lots drove the transaction
27 economically. The Purchase Agreement provided that the transaction would close

28 / / /

1 ten days after the "entitlement date," which is defined in Section 8.B of the
2 Purchase Agreement.

3 10. Under the terms of the Purchase Agreement, Midland Pacific also was
4 obligated to loan the Defendants the amount of One Million Dollars (\$1,000,000).
5 Midland Pacific did so.

6 11. Under the terms of the Agreement, Midland Pacific also was obligated
7 to make monthly payments in the amount of \$15,000 to the Defendants. Midland
8 Pacific did so. These monthly payments were referenced in the Purchase
9 Agreement as "Note Payments" because they were to be applied by King to the
10 outstanding loans against the SLO Property. Midland Pacific made the required
11 monthly payments until July 2008.

12 12. In connection with the Purchase Agreement, a "Memorandum Of
13 Agreement And Sale And Joint Escrow Instructions" was recorded with the County
14 Recorder for San Luis Obispo," a copy of which is attached as Exhibit "C." As set
15 forth in the Memorandum:

16 1. Notice. This Memorandum is intended to notify subsequent
17 purchasers, lenders and the public at large that the parties have reached an
18 agreement whereby Seller has agreed to sell and Buyer has agreed to
19 purchase Land.

20 ***

21 3. Title. Seller is the fee owner of the Property and it has full rights,
22 power and authority to enter into this Agreement and to sell, convey and
23 transfer good and marketable title in the Property to Buyer free and clear of
24 any liens and encumbrances other than those approved by Buyer, and to the
25 actual knowledge of Seller, there are no leases or other agreements allowing
26 for control or possession of the Property or any portion thereof to any party.

27 ***Pursuant to the Purchase Agreement, Seller shall not allow any***

28 / / /

1 subsequent ***liens or encumbrances against the Property without the***
2 ***prior written consent.*** [Emphasis added.]

3 13. At the time the Purchase Agreement was signed, King was processing
4 an application with the City to dedicate the 71-acre piece of SLO Property to the
5 City and subdivide the remaining 27-acre portion of the SLO Property. The
6 Purchase Agreement called for King to continue to process the Map and to obtain
7 approval of a subdivision that was in "*substantial conformance*" with the "Draft
8 Tract Map" which is attached to the Purchase Agreement.

9 14. Following execution of the Purchase Agreement, King continued to
10 process an application for a Map consistent with the "Draft Tract Map."

11 15. Subsequently, Midland Pacific -- in response to King's request --
12 approved an increase in the density in the number of lots from 120 lots to 140 lots,
13 which Midland Pacific still believed was in substantial compliance with the Draft
14 Tract Map attached to the Purchase Agreement.

15 16. In or about January 2006, shortly before the Planning Commission was
16 to consider the approval of the Tentative Tract Map for the SLO Property, I received
17 a call from Mr. King. During that conversation, Mr. King told me that unless I
18 agreed to pay him an additional \$40,000 per lot, he would submit a Map to the City
19 that would provide for an increased density on the SLO Property. He did not
20 provide firm numbers but my understanding was that he intended to increase the
21 density by 20-40 lots, which would be as much as 180 lots. Such an increase in
22 density would render many of the lots on the SLO Property unsuitable for Midland
23 Pacific's business plan for the SLO Property. In summary, Midland Pacific's plan --
24 formed prior to execution of the Purchase Agreement -- called for construction and
25 sale of detached single-family homes with a minimum of three bedrooms. In effect,
26 because of the limitations in the Margarita Area Specific Plan, the construction of
27 detached single-family homes with more than 2 bedrooms would be precluded on
28 many of the lots. I told Mr. King that submitting such a Map to the City would be a

1 breach of the Purchase Agreement. I also told Mr. King that I would not pay him
2 additional compensation above that required by the Purchase Agreement.

3 I declare under penalty of perjury under the laws of the United States of
4 America that the foregoing is true and correct.

5 Executed this 13th day of July, 2012, at Atascadero, California.

6
7 /s/Dennis Moresco

8 DENNIS MORESCO
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF REED HARRIS

I, Reed Harris, declare, that if called as a witness, I would and could competently testify thereto, of my own personal knowledge, as follows:

1. I was the Vice President of Development for the Plaintiff, Midland Pacific Building Corporation ("Midland Pacific") and held that position at all times mentioned in this Declaration.

2. I am personally familiar with the relationship between and the concerning Midland Pacific and John King ("King").

3. One of my responsibilities for Midland was to interact with King regarding the application for a tentative subdivision application for the land that is the subject of the lawsuit filed by Midland Pacific against King in the Superior Court in San Luis Obispo. My contact with King was generally through his representative David Watson.

4. I am familiar with the "Agreement Of Purchase And Sale And Joint Escrow Instructions" (the "Purchase Agreement") dated February 14, 2003 between Midland Pacific, buyer, and John E. King ("King") and Carole D. King, sellers, a copy of which is attached as Exhibit "B." The subject of the Purchase Agreement is a single parcel of land totaling approximately 98 acres (the "SLO Property") in the Margarita Expansion area within the City of San Luis Obispo (the "City").

5. Exhibit "A" to the Purchase Agreement, the "Draft Specific Plan" and the "Draft Tract Map," both contain an accurate description of the SLO Property that is the subject of the purchase and sale transaction.

6. Dennis Moresco is the President and Chief Executive Officer for Midland Pacific. I was involved in discussions with Dennis Moresco regarding the Purchase Agreement during the negotiation process. It is my understanding that the Purchase Agreement obligates King to process a subdivision Map for the SLO Property that is in substantial conformance with the "Draft Tract Map" attached to the Purchase Agreement. I am also aware that the "Draft Tract Map" (that was

1 attached to the Purchase Agreement) shows the subdivision of the SLO Property
2 into approximately 120 single family residential lots.

3 7. During the period February 2003 through January 2006, Mr. Watson
4 periodically provided me with information regarding the progress of the application
5 for approval of the Tentative Tract Map.

6 8. In or about 2005, Mr. Watson approached me and provided me with a
7 Draft Subdivision Map that showed a division of the SLO Property into 140 lots.
8 Mr. Watson told me that the increase was required by the City to accommodate
9 additional affordable housing units. The housing density in the reconfigured Map
10 would increase the number of detached single family residential lots to
11 approximately 140 lots. I conveyed the information to Mr. Moresco. Based upon
12 Mr. Watson's representations to me that the City required an increase in lots,
13 Midland Pacific agreed that it would consider the reconfiguration of the 140 Lot
14 Draft Subdivision Map to be in "substantial conformance" with the 120 Lot "Draft
15 Tract Map" attached to the Purchase Agreement.

16 9. At no time did Mr. Watson or any other representative of King tell me
17 that the additional lots were *not* required by the City or that King would be
18 compensated by neighboring property owners in exchange for King agreeing to
19 additional units on the SLO property. I have subsequently learned that the City did
20 not request an increase in the number of lots, and that King will be compensated
21 by the adjacent property owners for accepting additional "affordable" housing units.

22 10. After Midland Pacific agreed to an increase from 120 lots to 140 lots,
23 King, through Mr. Watson, assured me that he was processing a 140-Lot Map.

24 11. In January 2006, the subdivision Application was set for hearing before
25 the City Planning Commission. City Staff was recommending approval of a 140 Lot
26 Draft Subdivision Map with 140 single family residential lots.

27 12. On or about January 17, 2006, I heard a rumor that King was going to
28 submit a Map calling for significantly greater density than the 140 Lot Draft

1 Subdivision Map that Midland Pacific had approved. I also learned, from a third
2 party, that the subdivision Application was going to be heard by the City Planning
3 Commission on January 25, 2006. Neither King nor Mr. Watson had provided me
4 notice of that meeting.

5 13. After hearing the rumor, I telephoned David Watson on or about
6 January 17, 2006, and asked him what King was planning to do. Mr. Watson told
7 me that he "didn't know" exactly what was planned but knew it had something to
8 do with the City.

9 14. On January 18, 2006, I received a return telephone call from King. I
10 asked King whether he was increasing the density on the SLO Property. Mr. King
11 responded with words to the effect that the project had taken longer than
12 anticipated, that King Ventures, his development entity, had incurred unexpected
13 engineering costs and that the SLO Property had significantly increased in value.
14 In light of these factors, Mr. King said that he felt Midland should increase the
15 purchase price by a total of \$40,000 per lot from \$125,000 per Market Rate Lot to
16 \$165,000 per lot.

17 15. Mr. King told me that Midland Pacific would have to agree to the
18 increase in the purchase price of the lots. Mr. King threatened that should Midland
19 Pacific not agree to the price increase, King would present a Map to the City which
20 would both reduce lot size and increase the number of lots from 140 to
21 approximately 190-200. I told Mr. King that he would have to speak to Midland
22 Pacific's President, Dennis Moresco.

23 16. In response to King's request, Midland Pacific responded that Midland
24 Pacific would not increase the purchase price and that Midland Pacific expected
25 King to perform as provided in the Purchase Agreement. King refused.

26 17. On January 25, 2006, I attended the City of San Luis Obispo Planning
27 Commission meeting at which the 140 Lot Draft Subdivision Map for the SLO

28 / / /

1 Property was to be considered. The Agenda shows that the Map that was to be
2 considered was the 140-Lot Draft Subdivision Map.

3 18. At the meeting, Mr. Watson showed the Planning Commission a new
4 Map. I had never seen the new Map before. Both the Commissioners and City staff
5 indicated that they had never seen the Map before. I reviewed this new map. The
6 new Map did not show any lots in the interior of the SLO Property. During the
7 hearing for the subdivision application at the January 25th meeting, Mr. Watson
8 told the Planning Commission that King intended to return to the City and propose
9 a significantly greater density than depicted on the 140-Lot Draft Subdivision Map.
10 In response to the unveiling of this new high density Map, both Midland's attorney,
11 Jed Nicholson, and I addressed the Planning Commission and voiced our objections
12 to the processing of this high-density Map. The Planning Commission approved the
13 "new" Map.

14 19. On March 7, 2006, the City Council considered King's proposal for the
15 SLO Property and also considered proposals for two adjacent projects. As at the
16 Planning Commission, the two projects adjacent to the SLO Property were approved
17 without substantial change. Midland, however, objected to the City Council's
18 consideration and approval of the new King Map on the grounds that the
19 consideration of the new King Map by the Planning Commission was a violation of
20 the Brown Act and that no review under the California Environmental Quality Act
21 has been undertaken as to the new Map. The City Council did not then approve
22 the new Map.

23 20. On July 3, 2007, the City Council did approve King's new "High
24 Density Map" for the Property. The "High Density Map" contains approximately 178
25 lots.

26 / / /

27 / / /

28 / / /

1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed this 13th day of July, 2012, at Las Vegas, Nevada.
4
5

6 /s/Reed Harris
7 REED HARRIS
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF THOMAS D. GREEN

I, Thomas D. Green, declare, that if called as a witness, I would and could competently testify of my own personal knowledge as follows:

1. I am an attorney at law authorized to practice in the State of California and in the United States District Court for the Central District of California

2. I am a member in the law firm of Adamski Moroski Madden Cumberland & Green LLP.

3. I am the attorney primarily responsible for working with and for our client, Midland Pacific Building Corporation ("Midland Pacific"), in regard to litigation with John King.

4. This Declaration will review the procedural history of the litigation filed in the Superior Court in San Luis Obispo. To facilitate the review of the complex procedural history of the litigation, my office has prepared a detailed Chart that is attached as Exhibit "A."

5. Midland Pacific filed on February 10, 2006, a Complaint against John King ("King") and Carole King in the Superior Court in San Luis Obispo. The subject matter of the Complaint was an "Agreement Of Purchase And Sale And Joint Escrow Instructions" (the "Purchase Agreement") executed by Midland Pacific and the Kings, a copy of which is attached as Exhibit "B."

6. In connection with the original Complaint, a Notice Of Pendency Of Action was filed and recorded on February 10, 2006, a copy of which is attached as Exhibit "D."

7. On March 23, 2006, my firm, on behalf of Midland Pacific, filed a First Amended Complaint in which Midland Pacific alleged that the Kings had breached the Purchase Agreement. A copy of the First Amended Complaint (without Exhibits) is attached as Exhibit "E." The crux of the First Amended Complaint was King's insistence on processing a subdivision Map that was not in substantial conformance with the "Draft Tract Map" attached to the Purchase Agreement.

1 Because the Purchase Agreement required King to process a Map that was in
2 substantial conformance with the "Draft Tract Map," the First Amended Complaint
3 asserted that King was in breach. The First Amended Complaint, among other
4 things, requested an order specifically enforcing King's obligation to process a
5 subdivision Map in substantial conformance with the Purchase Agreement.

6 8. King responded to the First Amended Complaint by filing a Motion To
7 Dismiss the action under the anti-SLAPP Statute (California Code of Civil Procedure
8 Section 425.16). The effect of filing an anti-SLAPP Motion is to stay the
9 proceedings, with few exceptions. One of the actions stayed is the ability to amend
10 the pleadings.

11 9. Midland Pacific opposed the anti-Slapp Motion.

12 10. The Superior Court *denied* King's Motion. King appealed.

13 11. On July 18, 2007, the Court Of Appeals issued its published Opinion
14 affirming the trial court ruling. A copy of the Opinion is attached as Exhibit "F." In
15 its Opinion, the Court Of Appeal found that Midland Pacific had established a
16 reasonable probability of success on the merits. King filed a Petition For Review
17 asking the California Supreme Court to consider the matter. On March 12, 2008,
18 the Supreme Court, without opinion, denied King's Petition For Review. The stay
19 remained in effect during the appeal including the time during which the Petition
20 For Review was pending.

21 12. On or about September 2006, after the anti-SLAPP ruling had been
22 appealed, King brought a Motion To Expunge Lis Pendens that Midland Pacific had
23 recorded in February, 2006. The primary contention of King's Motion was the
24 argument that because the action only sought to enforce the obligation to process
25 the correct Map, it was not a "real property claim." Disagreeing with King, the
26 Superior Court *denied* King's Motion To Expunge.

27 / / /

28 / / /

1 13. King filed a Petition For Writ Of Mandate with the Appellate Court. On
2 July 18, 2007, the Appellate Court issued a Writ Of Mandate directing the trial
3 court to expunge the Lis Pendens. The basis of the Court's ruling was its belief that
4 an action to specifically enforce processing a subdivision Map, even if undertaken
5 as part of a purchase and sale agreement, did not involve title to or possession of
6 real property and therefore would not support a Lis Pendens. A copy of the
7 *unpublished* Appellate Court Opinion is attached as Exhibit "G." Midland Pacific
8 requested that the Supreme Court review the Appellate decision. On March 12,
9 2008, that request was denied.

10 14. On or about July 3, 2007, King obtained approval from the City of San
11 Luis Obispo for a Tentative Subdivision Map for the SLO Property which is
12 significantly different from the "Draft Tract Map" attached to the Purchase
13 Agreement. The "Draft Tract Map," as amended by agreement between Midland
14 Pacific and King, contained approximately 140 "Market Rate Lots" as that term is
15 defined in the Purchase Agreement. The Map that King had the City approve had
16 80 "Market Rate Lots" and an additional 98 lots for a total of 178 Lots.

17 15. Based on King's reconfiguration of the Map, Midland Pacific's position
18 is that the approved tentative Map contains only 80 lots that fall within the contract
19 definition of "Market Rate Lot." The purchase price for the SLO property, therefore,
20 is determined on the basis of 80 market rate lots at the contract price of \$125,000
21 per lot.

22 16. Under Purchase Agreement, Midland Pacific also is obligated to make
23 monthly payments to King in the amount of Fifteen Thousand Dollars (\$15,000.00).
24 Midland Pacific made all required payments in a timely manner; however, beginning
25 on or about May 5, 2006, King refused to accept these monthly payments. After
26 King refused to accept the monthly payments, Midland Pacific opened an escrow at
27 First American Title Company in San Luis Obispo. On June 29, 2007, King's
28 counsel sent a letter to Midland Pacific returning two un-cashed checks and stating

1 that it was King's position that Midland Pacific was in breach of the Purchase
2 Agreement and that King objected to the depositing of funds into the escrow
3 account for King. Midland Pacific continued to deposit all rejected payments into
4 the First American escrow account until July 2008, when it ceased making
5 additional payments.

6 17. Based upon: (1) King obtaining approval of a Map that Midland Pacific
7 contends is not in conformance with the Purchase Agreement, which approval
8 triggered Midland Pacific's obligation to purchase the SLO Property; (2) King's
9 refusal to accept monthly payments; and (3) the Court Of Appeals issuing its
10 decision that the First Amended Complaint did not include a cause of action
11 affecting title to or possession of real property, Midland Pacific filed on April 11,
12 2008:

- 13 • A Notice Of Motion And Motion To Amend First Amended Complaint;
- 14 • A Notice Of Motion And Motion To Re-Record *Lis Pendens* Following
15 Expungement; and,
- 16 • An *Ex Parte* Application For Order Shortening Time For Hearing On
17 Motions To Amend First Amended Complaint And To Re-Record *Lis*
18 *Pendens* Following Expungement.

19 18. On April 15, 2008, the parties stipulated in Court to Midland Pacific
20 filing a Second Amended Complaint and agreed to the Court forbearing from
21 issuing an Order to expunge the *Lis Pendens*.

22 19. The Second Amended Complaint was filed on April 15, 2008. As
23 already noted, under the terms of the Purchase Agreement, the City's approval of
24 the Map triggered Midland Pacific's obligation to purchase the SLO Property.
25 Midland Pacific was therefore in a position, for the first time, to seek specific
26 performance of the sale of the SLO Property at a specific price. The Second
27 Amended Complaint, in its fourth cause of action, contains a request for specific
28 performance to force King to honor its obligations under the Purchase Agreement to

1 sell the SLO Property to Midland Pacific. A copy of the Second Amended Complaint
2 (without Exhibits) is attached as Exhibit "H."

3 20. On May 2, 2008, the Court issued an Order on forbearing from issuing
4 an Order to expunge the *Lis Pendens* and set a briefing schedule on the Motion To
5 Re-Record *Lis Pendens*. A copy of the Order is attached as Exhibit "I." The Order
6 states:

7 6. The Court will forbear from entering an order
8 expunging the Notice of Pendency of Action recorded on
9 February 10, 2006 as Instrument No. 2006-009942 of the
Official Records of the County of San Luis Obispo until:

10 (a) the Kings' pleading responsive to the Second
11 Amended Complaint and all briefs filed in support and
12 opposition thereto have been heard by this Court and this Court
has determined whether Midland can maintain a real property
claim in this action;

13 (b) if the a cause of action supporting a real
14 property claim survives the pleading state, Midland has
expeditiously filed a motion to re-record lis pendens pursuant to
CCP Section 405.36; and

15 (c) such motion to re-record lis pendens is ruled
16 on by this Court.

17 21. On or about May 5, 2008, King filed a Demurrer to Midland Pacific's
18 Second Amended Complaint. On May 27, 2008, the Court overruled King's
19 Demurrer. In so ruling, the Court found that (1) the terms of the Purchase
20 Agreement were not so uncertain as to render the agreement unenforceable as a
21 matter of law; (2) that the Subdivision Map Act was inapplicable to the Purchase
22 Agreement; and (3) the terms of the Purchase Agreement were not inconsistent or
23 uncertain such that specific performance was not a possible remedy.

24 22. On or about June 26, 2008, King filed a Cross-Complaint for
25 Declaratory Relief, Breach Of Contract, Breach Of Implied Covenant Of Good Faith
26 And Fair Dealing, Reformation Of Contract, And Rescission Of Contract.

27 / / /

28 / / /

1 23. On August 28, 2008, Judge Charles Crandall of the Superior Court,
2 entered an Order denying Plaintiff's Motion For Leave To Re-Record *Lis Pendens*,
3 referring to the Second Amended Complaint:

- 4 • That Order specifically found that

5 The Fourth cause of action for specific performance clearly
6 affects the title and possession of the Property and is a "real
7 property claim" pursuant to CCP §§ 405.1 and 405.4. This is
8 confirmed in *BGJ Associates v. Superior Court* (1999)
9 75 Cal.App.4th 952, when the appellate court cites a "classic
10 example" of a cause of action affecting real property: "[a]
11 buyer's action for specific performance of a real property
12 purchase and sale agreement is a classic example of an action in
13 which a lis pendens is both appropriate and necessary." (Cal.
14 *Lis Pendens Practice, supra*, § 3.21, at p. 112; citations)." (BGJ
15 *supra* at 967) *Defendants essentially concede this point.*
16 [Emphasis added.]

- 17 • The Order determined that insufficient evidence had been filed to
18 permit the Court to affirm the probable validity of the fourth cause of
19 action, and denied the Motion. A copy of the Order is attached as
20 Exhibit "J."

21 24. On or about August 29, 2008, Midland Pacific filed a Motion To Strike
22 King's Cross-Complaint pursuant to the anti-SLAPP statute on the basis that King's
23 Cross-Complaint alleged Midland Pacific breached the agreement by appearing at
24 public meetings and communicating with City employees.

25 25. Midland Pacific filed on September 8, 2008, a "Notice Of Motion And
26 Renewed Motion For Leave To Re-Record Lis Pendens, Or In The Alternative, Motion
27 To Reconsider The August 28, 2008 Ruling Pursuant to Code of Civil Procedure
28 1008," which included substantial Declarations and documents to support a
finding on the probable validity of Midland Pacific's real property claim, contained
in the fourth cause of action in the Second Amended Complaint. A copy of the
Renewed Motion (without Exhibits) is attached as Exhibit "K."

 26. On September 11, 2008, Midland Pacific filed an Answer to King's
Cross-Complaint.

1 27. In September and then again in November 2008, the parties stipulated
2 to extend the hearing dates on Midland Pacific's Motion To Strike and Motion To
3 Re-Record Lis Pendens.

4 28. On December 22, 2008, the case was reassigned, and at the request of
5 counsel, the Court continued the hearing dates on Midland Pacific's two Motions to
6 February 26, 2009.

7 29. On January 13, 2009, at the request of the parties, the court again
8 extended the hearing on Midland Pacific's Motions to March 18, 2009, which was
9 subsequently moved again to May 13, 2009.

10 30. On May 4 & 6, 2010, the parties stipulated to resolve the issues
11 presented by Midland Pacific's pending Motions in order to allow the parties to
12 continue negotiating a possible settlement. In the May Stipulation, the parties
13 agreed that:

- 14 • Midland Pacific would be permitted to file a Third Amended Complaint;
- 15 • King would be permitted to file a pleading in response to the Third
- 16 Amended Complaint and an amended Cross Complaint;
- 17 • The Lis Pendens that was ordered expunged but remained of record
- 18 would continue to remain in place until defendant moved for
- 19 expungement or by further agreement of the parties; and
- 20 • That Midland Pacific's Motion To Strike and Motion To Re-Record
- 21 would be taken off calendar.

22 31. The Superior Court entered an Order on the Stipulation on May 8,
23 2009, permitting the *Lis Pendens* to remain of record. The Order states:

24 5. The Notice of Pendency of Action recorded by
25 Plaintiff on February 10, 2006 as Instrument No. 2006-009942
26 of the Official Records of the County of San Luis Obispo shall
27 remain of record unless and until (a) Defendant moves for
 expungement and the court grants expungement; or,
 (b) agreement of the parties.

28 The Stipulation and Order is attached as Exhibit "L."

1 32. On June 4, 2009, Midland Pacific filed a Third Amended Complaint
2 adding causes of action, including a ninth cause of action to establish and foreclose
3 a purchaser's lien on the SLO Property pursuant to Civil Code section 3050.

4 33. On July 10, 2009, King filed an Answer to the Third Amended
5 Complaint and a First Amended Cross-Complaint. On August 13, 2009, Midland
6 Pacific filed an Answer to the First Amended Cross Complaint.

7 34. On October 16, 2009, the case was reassigned to Judge Dodie Harmon
8 where it remains.

9 35. On November 10, 2010, the parties attended private Mediation but
10 were unable to resolve the matter, however the parties continued to work towards
11 resolution.

12 36. On March 29, 2011, the parties lodged a Stipulation To Extend The
13 Time To Bring The Action To Trial because the numerous times the case was stayed
14 during various Motions and Appeals made calculating the deadline unclear to both
15 parties. The parties agreed that any trial on or before February 6, 2013 would be
16 timely.

17 37. On August 12, 2011, Midland Pacific filed a Motion For Summary
18 Adjudication to foreclose its Purchaser's Lien, which Midland Pacific subsequently
19 withdrew.

20 38. On December 7, 2011, the parties stipulated to extend the trial date to
21 some date prior to December 6, 2012.

22 39. The case is scheduled to go to trial on October 1, 2012. Midland Pacific
23 is prepared to file a Motion For Relief From The Automatic Stay if the case is
24 remanded to the Superior Court.

25 40. The operative Complaint for Midland Pacific is the Third Amended
26 Complaint against King and Carole King asserting causes of action for Breach Of
27 Contract – Specific Performance, Declaratory Relief, Breach Of Contract – Damages,
28 Breach Of The Implied Covenant Of Good Faith & Fair Dealing, Fraud, Rescission

1 And To Establish And Foreclose Purchaser's Lien Pursuant To Civil Code
2 Section 3050. A copy of the Third Amended Complaint (without Exhibits) is
3 attached as Exhibit "M."

4 41. In his First Amended Cross-Complaint, King asserts causes of action
5 against Midland Pacific for Declaratory Relief, Breach Of Contract - Damages,
6 Breach Of The Implied Covenant Of Good Faith & Fair Dealing, Reformation Of
7 Contract and Rescission Of Contract.

8 42. On June 13, 2012 -- after six years of litigation in the Superior Court --
9 Intervenor Donna Cangelosi filed a Notice Of Removal To Bankruptcy Court after
10 filing, but not having a hearing on, a Motion To Intervene.

11 43. Midland Pacific seeks to obtain Judgment against King in the Superior
12 Court, that will permit Midland Pacific to foreclose on Midland Pacific's Purchaser's
13 Lien and recover from King approximately Five Hundred Eighty-One Thousand
14 Dollars (\$581,000) that Midland Pacific paid to King as deposit money towards the
15 purchase of the Property, in addition to interest thereon. However, once Midland
16 Pacific obtains a Judgment against King, Midland Pacific agrees to forebear its right
17 to foreclose on the Property without first going back to the Bankruptcy Court to
18 either: (1) have the Debtor agree to Midland Pacific's foreclosure and sale of the
19 Property; or (2) to be treated appropriately in Bankruptcy as a secured Judgment
20 Creditor with priority.

21 I declare under penalty of perjury under the laws of the United States of
22 America that the foregoing is true and correct.

23 Executed this 13th day of July 2012, in San Luis Obispo, California.
24

25 /s/Thomas D. Green
26 THOMAS D. GREEN
27
28

Exhibit List

- A. Chart on Procedural History of Superior Court Case.
- B. "Agreement Of Purchase And Sale And Joint Escrow Instructions," dated February 14, 2003, between Midland Pacific Building Corporation and John King and Carole King.
- C. "Memorandum Of Agreement And Sale And Joint Escrow Instructions," recorded in San Luis Obispo on February 14, 2003 as Instrument No. 2003-015656.
- D. Notice Of Pendency Of Action, filed February 10, 2006, filed in San Luis Obispo County as Instrument No. 2006-001942.
- E. Midland Pacific Building Corporation's First Amended Complaint For Breach Of Contract-Specific Performance; Declaratory Relief; Breach Of Contract-Damages; Breach Of The Implied Covenant Of Good Faith And Fair Dealing; Fraud And Injunctive Relief.
- F. Court of Appeal Ruling filed July 18, 2007 denying King's Appeal on denial of King's Motion To Dismiss Complaint.
- G. Court of Appeal Ruling (unpublished) filed July 18, 2007, on Writ Of Mandate ordering Superior Court to expunge *Lis Pendens*.
- H. Midland Pacific Building Corporation's Second Amended Complaint For Breach Of Contract - Specific Performance; Declaratory Relief; Breach Of Contract - Damages; Breach Of The Implied Covenant Of Good Faith And Fair Dealing; And Fraud.
- I. Order Entered By Superior Court on April 22, 2008, allowing *Lis Pendens* to remain of record.
- J. Order Denying Plaintiff's Motion For Leave To Re-Record *Lis Pendens*, filed by the Superior Court on August 28, 2008.
- K. Midland Pacific Building Corporation's Notice Of Motion And Renewed Motion For Leave To Re-Record *Lis Pendens* Or, In The Alternative, Motion To Reconsider August 28 Ruling Pursuant To Code Of Civil Procedure Section 1008, with Declarations, Request For Judicial Notice and Exhibit List (but without Exhibits), filed September 8, 2008.
- L. Order entered by the Superior Court on May 6, 2009, on Stipulation To: (1) Permit Plaintiff To File An Amended Complaint; (2) Permit Defendants To File An Amended Cross-Complaint; (3) To Continue *Lis Pendens*, And (4) To Take Motions Off Calendar.
- M. Midland Pacific Building Corporation's Third Amended Complaint For Breach Of Contract - Specific Performance, Declaratory Relief, Breach Of Contract - Damages, Breach Of The Implied Covenant Of Good Faith And Fair Dealing, Fraud, Rescission And To Establish And Foreclose Purchaser's Lien Pursuant To Civil Code Section 3050.